

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOE DASILVA, JR.,

Plaintiff, Civil No. 20-11358

v. Honorable Mark A. Goldsmith

CHRISTINE WORMUTH,
Secretary of the Army, and MARTIN
POTTER, in his individual capacity,
Magistrate Judge Anthony P. Patti

Defendants.

DECLARATION OF MARTIN POTTER

1. My name is Martin Potter. I am currently the Fire Chief at the Detroit Arsenal Fire Division and have served in that position since March 14, 2021. I began my career at the Detroit Arsenal Fire Division as a Firefighter in September 2000. During my employment prior to becoming Fire Chief, I have held the positions of Lead Firefighter, Assistant Fire Chief of Training (October 2013), Assistant Fire Chief of Operations (April 2014), and Interim Fire Chief (mid-December 2020).
2. I made a comment about Mr. DaSilva wearing a bra only one time, to my knowledge and recollection. We were in the kitchen. We were both laughing and having a good time. I had recently lost quite a bit of weight. Mr. DaSilva said that he would lose more weight than me. I said, “no way, you’ll never do that.” Mr. DaSilva then made a comment poking fun at my stomach size. I cannot remember exactly what he said, but I remember he made fun of my stomach in a joking way and I took it as a joke. I then poked fun at his chest by making a comment about him wearing a bra. This all occurred in the context of a “biggest loser” weight competition where firefighters would compete with each other to lose the most weight. I never meant the comment to be hurtful. I was joking with him and he was joking with me. My joke was in response to his joke about me.
3. Mr. DaSilva never asked me to stop joking around with him. I did not know that he took offense to my jokes at the time I made them. I first learned that Mr. DaSilva apparently took offense to my jokes when he filed a SHARP complaint against me in April 2018. I was shocked when I found out and never again joked with him.
4. In the Summer of 2017, while I was Mr. DaSilva’s supervisor, he requested the Fire Officer I training. I asked that he complete the course through the Department of Defense, Career Development Course program, which, at that time, was the norm for all personnel. I offered assistance on any areas Mr. DaSilva felt he may be struggling with. Mr. DaSilva enrolled in Fire Officer I training in September 2017. During this time, the CDC program

underwent significant changes that resulted in extensive delays with enrollments and test orders that were out of our hands.

5. In 2018, Assistant Fire Chief Michael Ball became Mr. DaSilva's supervisor and handled the remainder of scheduling this training for Mr. DaSilva and I was only contacted in May 2018 asking for funds to pay for the course. I asked for and received the quote for the course and submitted it to be processed the same day it was received. I notified Mr. DaSilva, Chief Edwards and Assistant Chief Ball of the same. It is my understanding that Mr. DaSilva attempted the test multiple times and eventually passed sometime prior to February 2019.
6. In the Fall of 2017, I was walking by Mr. DaSilva's bunkroom. The curtain was open and his laptop was open. There was pornography visible on the screen. I took Mr. DaSilva aside and asked him if he knew what was on his computer screen, and he said, "probably porn." This was potentially a fireable offense, but I remember thinking that I did not want him to have to tell his family that he was fired for watching pornography at work, so I decided to give him a warning that I memorialized in a memorandum.
7. I sat on Mr. DaSilva's interview panel when he interviewed for a promotion to captain/lead firefighter in 2019. Attached is my scoring sheet and the notes that I took during Mr. DaSilva's interview. Of the eight individuals who interviewed for the position, I scored Mr. DaSilva the second lowest. As my notes show, I did not deem Mr. DaSilva qualified for the position and recommended that he not get the job. I did not discuss my opinions about DaSilva's suitability for the position with the other scoring officials.
8. Shane Biehl was ultimately selected for the position. Mr. Biehl was, by far, the most qualified applicant for the position.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: December 16, 2022



MARTIN POTTER

RESUME REVIEW, ANALYSIS AND RATING CRITERIA RESULTS													
Captain, GS-08, USAG (Detroit Arsenal Fire and Emergency Services) 2019													
Category	Criteria	Points	Sample		DaSilva								
Work Experience	Experience leading a team: • Demonstrates team building and mentorship. • Demonstrates acceptance of responsibility. • Demonstrates problem solving capability. • Demonstrates ability to be a self-starter.	Max 4 points	4	4	2	4	4	4	4	4			
	DOD Firefighting experience: • 0-4 Years =1 points • 5-9 Years = 2 points • 10-14 Years = 3 points • 15+ Years = 4 points	Max 4 points	4	3	3	3	3	4	3	3			
	DOD Lead Firefighting Experience: • Demonstrates leadership • Demonstrates a desire for community involvement by participating in compliant practices for fire Prevention & Protection • Demonstrates the ability to provide open communication and transparency.	Max 5 points	5	5	0	5	5	5	5	0			
	Knowledge of Installation:	10 points	10	10	10	10	10	10	10	0			
	Performed as a Lead Firefighter at the Detroit Arsenal:	10 points	10	10	0	0	10	10	10	0			
Training/ Certifications/ Education	Tech Rescue I Certification	3 points	3	3	3	3	3	3	3	3			
	Tech Rescue II Certification	3 points	3	3	3	0	3	3	3	0			
	Haz Mat IC	3 points	3	0	0	3	3	0	0	0			
	Health & Safety Officer	2 points	2	2	0	0	0	2	2	0			
	Incident Safety Officer	2 points	2	2	2	0	0	2	2	2			
	Blue Card Certified	2 points	2	0	0	0	0	0	0	0			
	ICS 300/400	2 points	2	2	0	2	2	0	2	0			
	CPSE Fire Officer Designee	2 points	2	0	0	0	0	0	0	0			
	Associate Degree=1,Bachelor Degree=2,Master Degree=3	3 points	3	1	0	0	2	0	0	3			
Awards and Levels of Recognition	Special Acts of Service, Achievement, Commander's, or Superior Performance Awards within the Last 5 YearsOther - Monetary Awards, QSI, On The Spot, Time-Off, GO/SES Level Recognition	1 thru 5 points	5	5	0	4	0	5	5	0			
Other Experience	Other Significant Accomplishments	1 thru 5 points	5	5	4	3	3	4	3	1			
Interview Rating Sheet	Total Points From Oral Interview	9 thru 45 Points	45	43	19	35	29	33	29	23			
	Totals:	110	98	46	72	77	85	81	39	0	0	0	0
Name: Martin Potter Position: Assistant Fire Chief			Grade: GS-10 DSN: 786-6448		Organization: IMMI-ESF			Location: USAG-DTA					

INTERVIEW RATING SHEET						
Name of Position:		Date of Interview:				
Captain/Lead Firefighter, USAG Detroit Arsenal		Nov, 4th 2019				
Name of Candidate: Joe DaSilva						
Panel Members		ANCHORS				
		Evidence of Skill is Not Present	Some Evidence of Skill is Present	Very strong evidence skill is present		Total
<u>Performance Skills to be evaluated</u>						
Rating/Score:		1	3	5		
1 Motivating Others			X			
2 Innovation & Initiative			X			
3 Leadership		X				
5 Customer Service			X			
4 Planning, Prioritizing, and Goal Setting		X				
6 Team Building				X		
7 Scopes of Services / CLS		X				
<u>Technical Skills to be evaluated</u>						
8 Fire Response (ICS)		X				
9 Army Core Values		X				
Total Score for Candidate:		5	9	5		19
RECOMMENDATION:		Hire/Promote/Priority#			Not Hire/Promote	
Reason for Recommendation: See matrix and interview scoring.						
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Performance Skill Questions with Interpretive Guides and Anchors

Name of Position: Captain/Lead Firefighter

Motivating Others

Able to exhibit a "can-do" approach and inspire associates to excel; use competition to encourage others; develop performance standards and confront negative attitudes; learn what motivates others.

<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>
Bland communication style; Rarely sets positive example; Limited coaching/counseling skills; Limited awareness of goals, Socially isolated.	Average energy in speaking; Usually sets positive example; Some coaching/counseling skills; May use goals to motivate; Accepted by others.	Speaks with enthusiasm; Consistently sets positive example; Good coaching/counseling skills; Regularly uses goals to motivate; Admired by others.

Describe a time you were able to provide mentorship and coaching techniques to motivate a team during an operational change.

As taught CPR classes on and off Post

Did the candidate voice a "can-do" orientation, then plan and manage in a way that supported success? Was there a hollow, barely positive approach that may have stifled productive behavior?

Who was involved?

*Base populace
Fire Department members*

What did you use as motivational factors for both yourself and the individual or group? How were you able to measure the results of the success?

Informed students of the skill they would possess and take home

What skill set can you provide to ensure the employees you potentially lead remain motivated and are a viable asset to the installation?

Reminding them of the potential use of the skill in work and personal life.

3

Performance Skill Questions with Interpretive Guides and Anchors

Name of Position: Captain/Lead Firefighter

Innovation & Initiative

Able to display a high level of initiative and consistently seize opportunities when they arise; demonstrate commitment to sound business practices; improve upon conventional practices; apply novel solutions to problems and support continuous improvement.

<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>
Takes action when directed; Uses poor judgment in pursuing opportunities; Makes trivial improvements; Sticks with tried and true solutions; Provides little support for improvement.	Takes necessary steps to meet goals; Pursues routine opportunities; Corrects obviously flawed processes; Accepts others' new ideas; Understands need for continuous improvement.	Resourceful in accomplishing goals; Recognize/seizes unusual opportunities; Engineers significant improvements; Generates novel solutions; Encourages specific ideas for improvement.

We value people who display a high level of initiative. Describe a time you displayed innovation and initiative to improve or develop a process, contract, or tasking.

Engine door would not close due to extrication equipment. Used resources on post to develop a new bracket to secure equipment.

Did the candidate do something unusual for his/her position, proactive and important? Was the action a routine part of the job? Was he/she directed to do it? Or, was it otherwise trivial?

Who was involved?

*Tenants on Post**Peers*

What was the outcome?

Fixed issue with door and forged relationships with tenants on base.

What skill set can you provide to maintain innovation and initiative as a paramount aspect of your leadership towards the organization you potentially would lead?

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Performance Skill Questions with Interpretive Guides and Anchors

Name of Position: Captain/Lead Firefighter

Leadership

Able to inspire and motivate others toward strategic/operational goals and corporate values; coach and mentor others; consistently demonstrate decisiveness in day-to-day actions by making timely decisions; lead by example; face adversity head on; demonstrate concern for employees' welfare and safety by continuously monitoring and eliminating hazardous or unhealthy work situations.

<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>
Takes minimal action to motivate others; Reluctant as a coach; Chooses randomly when data is incomplete; Avoids conflict situations; Tolerates unsafe conditions.	Educes others about corporate values/goals; Recognizes the value of feedback; Delays decisions when data is incomplete; Addresses conflict when required; Corrects dangerous situations	Persuasively links individual/corporate goals; Gives constructive feedback and follows up; Uses available data to make timely decisions; Surfaces and effectively resolves conflict; Monitors and eliminates unsafe conditions.

What are two of the most important values you demonstrate as a leader when dealing with a difficult issue?

Willing to do a job a leader you would want subordinates to do.

Did the candidate provide active guidance, constructive feedback and a vote of confidence, and follow up helpfully? Was there little more than basic advice?

Give examples of each of these leadership values you have practiced in your career when dealing with such issues.

Sending emails to get leadership attention to deal with issues they may not want to hear or changes they don't want to make.

Explain your greatest strengths and weaknesses as a leader. Explain what you have experienced as a success and as a failure to your leadership style. Explain what you have learned from your past errors in leadership.

States he has no weaknesses.

(3)

Performance Skill Questions with Interpretive Guides and Anchors**Name of Position:** Captain/Lead Firefighter**Customer Service**

Able to identify and resolve customer service issues and concerns; demonstrate commitment to providing high quality service; continuously assess performance from the customer's point of view; anticipate and meet customer expectations; implement programs to promote customer focus.

<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>
Prioritizes internal concerns over customer needs, Conducts cursory spot checks, Not responsive to customer feedback, Fails to meet customer expectations, Fails to reward customer-focused behavior.	Identifies obvious customer issues/needs, Emphasizes importance of high quality, Reacts to negative customer feedback, Meets some customer expectations, explains benefits of being customer-focused.	Anticipates and addresses customer issues/needs, Ensures highest quality service, Solicits customer feedback on performance, Exceeds customer expectations, Implements programs to promote customer focus.

Describe a situation in which you had to deal with a customer, tenant, or stakeholder who was difficult, hostile or distressed during your interaction.

*Medical runs on installation many times
Patients may not want treatment*

Who was involved?

Customers (military & civilian)

Did the candidate recognize that the customer's experience was more important than other angles (e.g., cost control, historical data), monitor that through proactive communications with customers, and address any improvement areas needed? Was there merely a reaction to an obvious evolving problem?

What specific actions did you take and what were the results?

*Able to convince patient they need treatment and has had
Patients who truly had medical Emergencies and wouldn't have
sought medical attention if he didn't convince them.*

What skill set can you provide to ensure the organization will be remain customer driven and customer focused?

Performance Skill Questions with Interpretive Guides and Anchors		
<p>Name of Position: Captain/Lead Firefighter</p> <p>Planning, Prioritizing and Goal Setting</p> <p>Able to prepare for emerging customer needs; manage multiple projects; determine project urgency in a meaningful and practical way; use goals to guide actions and create detailed action plans; organize and schedule people and tasks.</p>		
<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>
Little time management skill; Limited experience in writing goals; Rarely uses written plans; Disorganized; Rarely sets priorities based on customer needs	Some skill in time management; Can write and set goals; Occasionally uses written plans; Generally organized; Can set priorities based on customer needs.	Skilled in a time management system; Writes specific goals with target dates; Uses written plans to guide activities; Highly organized; Prioritizes based on customer needs.
<p>Describe a situation that you were involved in to develop a new process or task in your current position that benefited your organization as well as your customers.</p> <p><i>Part of team who revamped medical report forms to align with City of Warren.</i></p> <p>Did the candidate keep all projects moving to hit deadlines? Was there haphazard allotment of resources to different tasks with unproductive and unnecessary chaos?</p>		
<p>Who was involved?</p> <p><i>Warren FD Print Shop Medical Program</i></p>		
<p>How did you set priorities?</p>		
<p>What was the outcome?</p> <p><i>Reproduced the a similar medical report Warren utilizes.</i></p>		

Performance Skill Questions with Interpretive Guides and Anchors								
<p>Name of Position: Captain/Lead Firefighter</p> <p>Team Building</p> <p>Able to encourage a participative approach to work and foster a cooperative environment; coach others in team-playing skills and maintain a strong team spirit; work well with others across the organization; place team priorities before personal priorities.</p> <table border="1"> <thead> <tr> <th><i>Evidence of Skill is Not Present</i></th> <th><i>Some Evidence of Skill is Present</i></th> <th><i>Very Strong Evidence of Skill is Present</i></th> </tr> </thead> <tbody> <tr> <td>Does not seek input from others; Reluctantly works with others; Offers hollow praise for teamwork; Resists working across departments; Prioritizes own interests over team priorities.</td> <td>Seeks limited input; Provides backup help when needed; Explains the need for team skills; Works with other departments as required; Devotes some time/resources to team priorities.</td> <td>Encourages full team participation; Promotes the benefits of working cooperatively; Helps others build and practice team skills; Encourages working across departments; Subordinates own priorities to meet team goals.</td> </tr> </tbody> </table> <p>Organizational pride is important to effective professional team productivity. Describe a time that required you to organize and lead a team to achieve a common goal for a common benefit.</p> <p><i>Responsible for organizing an adopt a family fundraiser. Collected money and Purchased gifts.</i></p> <p>Who was involved?</p> <p><i>ACS</i></p> <p><i>Department personnel</i></p> <p><i>Families receiving gifts</i></p> <p>What was the outcome?</p> <p><i>Successfully ran the program and Purchased gifts for families.</i></p>			<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>	Does not seek input from others; Reluctantly works with others; Offers hollow praise for teamwork; Resists working across departments; Prioritizes own interests over team priorities.	Seeks limited input; Provides backup help when needed; Explains the need for team skills; Works with other departments as required; Devotes some time/resources to team priorities.	Encourages full team participation; Promotes the benefits of working cooperatively; Helps others build and practice team skills; Encourages working across departments; Subordinates own priorities to meet team goals.
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Performance Skill Questions with Interpretive Guides and Anchors

Name of Position: Captain/Lead Firefighter

Scopes of Services / CLS

Able to articulate Army Fire and Emergency Services programs and performance delivery IAW Army Fire and Emergency Services policies, regulations, and memorandums over all and specifically the Protection dividsion.

<i>Evidence of Skill is Not Present</i>	<i>Some Evidence of Skill is Present</i>	<i>Very Strong Evidence of Skill is Present</i>
Does not know what CRA/SOC is; Cannot explain why CRA/SOC is important to a department; Unable to explain how SOC provides support for Garrison leadership.	Has limited knowledge of a CRA/SOC is; Can vaguely explain why CRA/SOC is important to a fire department; Had difficulty explaining how SOC provides support for Garrison leadership.	Vast knowledge of CRA/SOC is evident; Easily able to articulate why CRA/SOC is important to a fire department; Displayed the ability to explain how SOC provides support for Garrison leadership.

What is a Community Risk Assessment & Standards of Cover?

Did the candidate explain the importance of the CRA/SOC, were they able to link the importance of the documents to the fire department and the Garrison leadership?

Describe how a Standards of Cover provides documented support for program effectiveness, program execution, and installation needs for manpower, apparatus, and cooperative partnerships for base operations.

How does a Standards of Cover support base operations for the Garrison leadership?

Variable to Answer

Technical Skill Questions	
Name of Position:	Captain/Lead Firefighter
Technical Skill Title:	Incident Command System / Notifications
Technical Skill Definition:	Knowledge Based
Technical Skill Question(s): <p style="text-align: right;">→ over</p> <ol style="list-style-type: none"> As a Captain/Lead Firefighter, you are charged with the safety and well-being of your team and the community you serve. Please explain in great detail how the Incident Command System (ICS) works. Provide an overview of how you will brief fire department leadership during an emergency incident and work with the EOC during significant events to ensure safety for the installation. 	
Name of Position:	Captain/Lead Firefighter
Personal Values: <u>Army Core Values</u> <p>Personal Values Question: Identify the two most important Army Core Values to you and provide an example where you demonstrated each of those Army core values. Ensure you are clear and concise as to how each of your examples relates to each of the core values you choose.</p>	
Closing Statement: <ol style="list-style-type: none"> We would like to offer you the opportunity to add anything on your behalf to this interview. 	
Interview Scheduled for (Enter Date and Time):	
<input type="checkbox"/> Candidate failed to keep interview appointment (without rescheduling)	
<input type="checkbox"/> Candidate withdrew from employment or promotion consideration. Give date / time / means (in-person, phone, e-mail, etc) and reason(s) for withdrawal or declination in the summary area above.	
Interviewers Name and Title (Type or Print):	Interviewer Signature:

ICS 1. Incident Command works by chief being in Command and Subordinates report to IC. IC Reports to GM.

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ICS 2: Provide EOC with ADK and during emergency dispatch will notify EOC of on scene issues.

Army Core Values:

Stated he couldn't remember Core Values.

②

Support mission: By coming in for 48 hrs shift. Ensuring ready to support mission and support customer. Didn't remember say more Core values.